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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/669,087	09/25/2000	Carl P Pearson		3364

30621 7590 12/18/2002

JENSEN + PUNTIGAM, P.S.  
SUITE 1020  
2033 6TH AVE  
SEATTLE, WA 98121

EXAMINER
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HOTALING, JOHN M

ART UNIT	PAPER NUMBER
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3713

DATE MAILED: 12/18/2002

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

09/669,087

Applicant(s)

PEARSON, CARL P

Examiner

John M Hotaling II

Art Unit

3713

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

1) Responsive to communication(s) filed on 08 October 2002.  
2a) This action is FINAL.      2b) This action is non-final.  
3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

4) Claim(s) 1-28 is/are pending in the application.  
4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.  
5) Claim(s) \_\_\_\_\_ is/are allowed.  
6) Claim(s) 1-28 is/are rejected.  
7) Claim(s) \_\_\_\_\_ is/are objected to.  
8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

9) The specification is objected to by the Examiner.  
10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
    Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
11) The proposed drawing correction filed on \_\_\_\_\_ is: a) approved b) disapproved by the Examiner.  
    If approved, corrected drawings are required in reply to this Office action.  
12) The oath or declaration is objected to by the Examiner.

**Priority under 35 U.S.C. §§ 119 and 120**

13) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
    a) All    b) Some \* c) None of:  
    1. Certified copies of the priority documents have been received.  
    2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
    3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.  
14) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).  
    a) The translation of the foreign language provisional application has been received.  
15) Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

**Attachment(s)**

1) Notice of References Cited (PTO-892)  
2) Notice of Draftsperson's Patent Drawing Review (PTO-948)  
3) Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.  
4) Interview Summary (PTO-413) Paper No(s) \_\_\_\_\_.  
5) Notice of Informal Patent Application (PTO-152)  
6) Other: \_\_\_\_\_

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 103***

1. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims 1-27 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peppel US Patent 6,200,216 in view of Sehr US Patent 6,325,292 and Pearson et al US Patent 5,411,259. The rejection contained in the previous office action is maintained and incorporated herein.

### ***Response to Arguments***

2. Applicant's arguments filed 7/24/02 have been fully considered but they are not persuasive.

In response to the applicant's arguments that there is no suggestion of a game system using trading cards connectable by means of a server unit to a website via a global computer network, please see columns 5-8 disclose the type of cards are used, what types of media the cards are able to be used on, that the cards are media (CD ROM, networked servers, fixed and floppy disks, **data cards**, writable optical storage, and RAM) and platform (including personal digital communicators, handheld computing devices, video game machines) independent all of the specifics of on-line trading and posting of cards, distribution of cards. ETC's are intended to be transportable across a wide range of digital computing platforms. A website is a networked server running a

program. Peppel discloses that trading cards affect the characteristics, rules, performance of selected aspects of the system, that the cards may be used to operate in the context of a card trading environment and may be combined, for example in an adventure game involving character card that include clues for playing the game. Furthermore, columns 10 and 11 state that ETC games are similar in structure to existing video and computer games except for a unique distinction: they require the ETC's to move the action of the game forward and in some cases also generate ETC's in the course of a game. Peppel discloses that the registering, timing, using copies or replica protection and the trading of cards online.

In response to applicant's arguments against the references individually, one cannot show nonobviousness by attacking references individually where the rejections are based on combinations of references. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981); *In re Merck & Co.*, 800 F.2d 1091, 231 USPQ 375 (Fed. Cir. 1986). Sehr was not cited to teach a video game system using a trading card and Pearson was not cited as an internet based game. Therefore, in response to the applicant's argument that the patent to Sehr has no teaching concerning a video game system using trading cards please see Peppel above. Sehr does teach in figure 1 and column 5 the use of a collector card in the system and column 20 discloses game play. Furthermore, in response to the applicant's argument that the patent to Pearson has no disclosure of an internet based website that verifies that a player can play the video game with a particular card please see Peppel above with respect to platform independence.

In response to the applicant's arguments that none of the reference teaches the use or verification of replica trading cards please see the rejection to Peppel in the previous office action.

In response to the applicant's arguments that the visual display means, the scanner, and the control system are separate elements please see above with respect to media and platform independence.

In response to the argument that the references used are basically nonanalogous art, it has been held that a prior art reference must either be in the field of applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the applicant was concerned, in order to be relied upon as a basis for rejection of the claimed invention. See *In re Oetiker*, 977 F.2d 1443, 24 USPQ2d 1443 (Fed. Cir. 1992). In this case, all of the references are related to trading or collector cards.

### **Conclusion**

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Hara '368 discloses a toy game apparatus with a card reader

GB 2,331378 discloses a game controller with a bar code reader

JP 05307634 disclose a card game toy with a bar code reader

JP 06325191 discloses a bar code battle game

JP 05337251 discloses a consol bar code reader game

JP 06071049 discloses a hand held bar code reader game

JP 05253335 discloses a hand held and consol bar code reader game

**Conclusion**

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to John M Hotaling II whose telephone number is 703 305 0780. The examiner can normally be reached on Mon-Thurs 7:30-6.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Valencia Martin-Wallace can be reached on (703) 308-4119. The fax phone numbers for the organization where this application or proceeding is assigned are 703 746 3236 for regular communications and 703 308-7769 for After Final communications.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-7777.

John M Hotaling II  
November 21, 2002



VALENCIA MARTIN-WALLACE  
SUPERVISORY PATENT EXAMINER  
TECHNOLOGY CENTER 3700